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By Environmental Improvement Board at 4:16 pm, Feb 21, 2022

STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF THE APPEAL
ON AIR QUALITY PERMIT NO. 8585

No. EIB 21-48

EARTH CARE NEW MEXICO, BY MIGUEL ACOSTA MUÑOZ
and LINDA MARIANELLO, AS AN INDIVIDUAL
Petitioners,

v.

NEW MEXICO ENVIRONMENT DEPARTMENT

and

ASSOCIATED ASPHALT AND MATERIALS, LLC
Applicant

HEARING OFFICER'S FIRST PROCEDURAL ORDER

Pursuant to the appointment of the Hearing Officer as provided in 20.1.2.109 NMAC, and the publication of the Notice of Public Hearing in this matter, the Hearing Officer, being fully advised, ORDERS:

1. **WebEx Platform; Hearing Participation.** The public hearing in this matter shall be held virtually via the WebEx platform commencing February 23, 2022 at 9:00 a.m., and continuing until completed. Instructions on how to participate in the hearing are provided in the Notice of Public Hearing, English and Spanish versions of which are attached to this First Procedural Order as Attachment 1 and are incorporated herein by reference as fully set forth herein.
2. **Governing Procedural Rules.** The procedures related to the hearing will be governed by 20.1.2. NMAC.

3. Admission of Statements of Intent to Submit Technical Testimony (“Statements of Intent”). Statements of Intent and related exhibits will be entered into the record pursuant to the following stipulations of each of the parties submitted February 18, 2022 and the Order of the Hearing Officer dated February 21, 2022:

Petitioners agree that the following NMED exhibits may be entered into evidence by stipulation:

NMED EIB Exhibit 1	NMED EIB Exhibit 9
NMED EIB Exhibit 1A	NMED EIB Exhibit 10
NMED EIB Exhibit 2	NMED EIB Exhibit 11
NMED EIB Exhibit 3	NMED EIB Exhibit 12
NMED EIB Exhibit 4	NMED EIB Exhibit 13
NMED EIB Exhibit 5	NMED EIB Exhibit 14
NMED EIB Exhibit 6	NMED EIB Exhibit 16
NMED EIB Exhibit 7	NMED EIB Exhibit 17
NMED EIB Exhibit 8	NMED EIB Exhibit 18

NMED agrees that the following Petitioners’ exhibits may be entered into evidence by stipulation:

Community EIB Exhibit 1
Community EIB Exhibit 2
Community EIB Exhibit 3
Community EIB Exhibit 4
Community EIB Exhibit 5
Community EIB Exhibit 6
Community EIB Exhibit 7
Community EIB Exhibit 8
Community EIB Exhibit 9

The following Petitioners’ exhibits will be entered into evidence pursuant to the Order of the Hearing Officer dated February 21, 2021:

Community EIB Exhibit 10: Written Report of Michael Schneider (portions allowed by the Order of the Hearing Officer only).
Community EIB Exhibit 11: Resume of Michael Schneider.

The following exhibits will not be entered into evidence pursuant to the Order of the Hearing Officer dated February 21, 2022:

Community EIB Exhibit 12
Community EIB Exhibit 13
Community EIB Exhibit 14
Community EIB Exhibit 15
Community EIB Exhibit 16
Community EIB Exhibit 17
Community EIB Exhibit 18
Community EIB Exhibit 19

4. **Public Non-Technical Testimony.** The Hearing Officer will accept non-technical testimony or general public comment either in writing or orally. Members of the public who wish to provide general comment are encouraged to submit their comments in writing to Pam Jones (Pamela.Jones@state.nm.us) either before or during the hearing. General public comment will be accepted periodically throughout the hearing as set out in Section 6 below. Instructions for signing up to provide public testimony and comment are contained in the Notice of Public Hearing attached as Attachment 1 to this First Procedural Order. Members of the public may testify once during the hearing; written comment is unlimited.
5. **Accommodations.** As set out in the Notice of Public Hearing, the Department shall provide a process for those who wish to participate in the hearing in Spanish to do so, and for those who are hearing-impaired and wish to participate in the hearing to do so. Instructions on how to obtain assistance are contained in the Notice of Public Hearing and may also be obtained by calling (505) 660-4305 or email to public.facilitation@state.nm.us.
6. **Public Hearing Procedures.** The following is the general order of presentation and procedures for the public hearing:
 - a. Introduction of Environmental Improvement Board (“EIB”) Members
 - b. Discussion of Preliminary Matters by the Hearing Officer

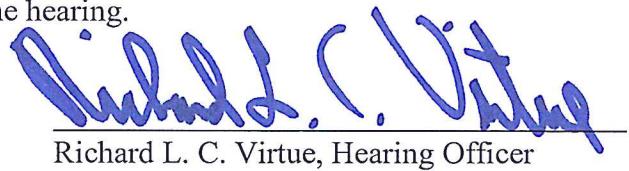
- c. Opening Statements of the Parties (Optional)
- d. Presentation and Cross-Examination of Petitioners' Technical Testimony
- e. Presentation and Cross-Examination of NMED Technical Testimony
- f. Opportunity for Rebuttal Testimony from each party and Cross-Examination on Rebuttal Testimony
- g. Order of Cross-Examination:
 - 1) Opposing Party (NMED = Appellant; Appellant = NMED)
 - 2) Public
 - 3) EIB Members
- h. Presentation and Cross-Examination of Public Non-Technical Testimony will be allowed at approximately 1:00 p.m., and 5:00 p.m., each day of the hearing subject to change based on availability of persons who have notified the Board Administrator of their intent to testify.

7. Post Hearing Schedule. (Dates to be established at the conclusion of the hearing).

- a. Transcript Filing
- b. Closing Arguments, Legal Briefs and Proposed Findings of Fact and Conclusions of Law
- c. Hearing Officer's Report and Recommended Decision
- d. Comments on Hearing Officer's Report and Recommended Decision
- e. EIB Deliberation and Decision

8. Hearing Record. The hearing will be transcribed by a court reporter. The hearing will also be recorded via WebEx. At the conclusion of the hearing, the method of obtaining copies of the transcript and WebEx recording will be determined.

9. **Revisions.** The Hearing Officer may revise this First Procedural Order, if necessary or appropriate during the course of the hearing.



Richard L. C. Virtue, Hearing Officer

Attachment 1

New Mexico Environmental Improvement Board
Notice of Public Hearing
(English and Spanish Versions)
EIB 21-48



STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD
Harold Runnels Building, Suite S-2102
1190 St. Francis Drive
Santa Fe, New Mexico 87505
Phone: (505) 827-2428

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD
NOTICE OF PUBLIC HEARING
EIB 21-48

The New Mexico Environmental Improvement Board (“Board”) will hold a public hearing beginning at 9:00 a.m. MST on February 23, 2022 and continuing on consecutive days as needed via the web application WebEx. This time-sensitive hearing is being held via WebEx due to restrictions currently in place by the Governor’s Executive Orders and various emergency public health orders designed to protect the public and prevent the spread of COVID-19. The hearing location may change prior to the hearing date, and the Board may hold the hearing in person if circumstances allow. Even if the Board holds the hearing in person, the Board Administrator will provide teleconference or virtual access to those wishing to participate without being at the hearing in person. Those interested in attending should contact the Board Administrator or visit the NMED Calendar at www.env.nm.gov/events-calendar/. Go to the start date of the hearing and click on the entry about this hearing for instructions on how to participate. The purpose of the hearing is to consider the appeal petition (“Petition”) filed by Earth Care New Mexico, by Miguel Acosta Muñoz, and Linda Marianiello, as an individual, (collectively “Petitioners”), through counsel, the New Mexico Environmental Law Center, in EIB 21-48.

In EIB 21-48, Petitioners challenge the approval of Air Quality Permit No. 8585, issued by the New Mexico Environment Department (“Department”) to Associated Asphalt and Materials, LLC (“AAM”) for the Santa Fe Facility at 86 Paseo de River, Santa Fe, NM 87505 in Santa Fe County, New Mexico. Petitioners contend the Department’s decision approves a definition of ambient air that is contrary to the law. Petitioners further contend the air dispersion modeling is deficient, violating of the Bureau’s Air Dispersion Modeling Guidelines, U.S. Environmental Protection Agency (EPA) Guidance, and applicable law. Petitioners claim the Department’s hearing process violated Title VI of the 1964 Civil Rights Act and the Department’s own policy by violating limited English proficient (LEP) community members’ right to meaningfully participate in the hearing.

The Petition and related documents may be viewed on the Department’s docketed matters website under the Environmental Improvement Board dropdown, in the section for EIB 21-48 Appeal Petition – Permit No. 8585 Associated Asphalt and Materials, LLC. The Department’s docketed matters website is at <https://www.env.nm.gov/opf/docketed-matters/>.

The Hearing will be conducted in accordance with the Board’s Adjudicatory Procedures (20.1.2 NMAC); the New Mexico Air Quality Control Act, NMSA 1978, Sections 74-2-1 through -22; the State Rules Act, NMSA 1978, Section 14-4-5.3; and other applicable procedures.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally and in writing; to introduce exhibits; and to examine witnesses. Any person wishing to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing.

TECHNICAL TESTIMONY

Any person who wishes to present technical evidence at the hearing shall file a statement of intent by February 8, 2022. The statement of intent to present technical evidence shall include: (i) the name of the person filing the statement; (ii) an indication of whether the person filing the statement supports or opposes the petition at issue; (iii) the name of each witness; (iv) an estimate of the length of the direct testimony of

each witness; (v) a list of exhibits, if any, to be offered into evidence at the hearing; and (vi) a summary or outline of the anticipated direct testimony of each witness.

ENTRY OF APPEARANCE

Any person who wishes to be treated as an interested participant and to cross-examine witnesses at the hearing shall file and serve upon all parties an entry of appearance on or before February 8, 2022. A timely statement of intent shall be considered an entry of appearance. The entry of appearance must identify the person wishing to be treated as an interested participant and any individual who may appear on behalf of that person.

Those wishing to submit non-technical testimony prior to the hearing may submit relevant evidence, data, views, and arguments to:

Environmental Improvement Board Administrator
New Mexico Environment Department
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502

Those submitting non-technical public comment at the hearing or a non-technical written statement in lieu of oral testimony at or before the hearing should reference docket number EIB 21-48. Public comment and non-technical testimony may also be submitted to the Board Administrator at public.facilitation@state.nm.us.

If any person requires assistance, an interpreter, or an auxiliary aid to participate in this process, please contact the Board Administrator no later than Wednesday, February 9, 2022, at 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502, telephone (505) 660-4305, or email public.facilitation@state.nm.us (TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

Notice of Nondiscrimination

The Department does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. The Department is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of the Department's non-discrimination programs, policies or procedures, you may contact: Kathryn Becker, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. If you believe that you have been discriminated against with respect to a Department program or activity, you may contact the Non-Discrimination Coordinator identified above. You may also visit the Department's website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.



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JUNTA DE MEJORA AMBIENTAL DE NUEVO MÉXICO
AVISO DE AUDIENCIA PÚBLICA
EIB 21-48

La Junta de Mejora Ambiental de Nuevo México ("Junta") celebrará una audiencia pública que comenzará a las 9:00 a.m., MST (hora estándar de la montaña), el 23 de febrero de 2022 y continuará en días consecutivos según sea necesario a través de la aplicación web WebEx. Esta audiencia, con tiempo limitado, se celebra a través de WebEx debido a las restricciones actualmente en vigor por las Órdenes Ejecutivas de la Gobernadora y varias órdenes de salud pública de emergencia diseñadas para proteger al público y prevenir la propagación de COVID-19. La ubicación de la audiencia puede cambiar antes de la fecha de audiencia, y la Junta puede celebrar la audiencia en persona si las circunstancias lo permiten. Incluso si la Junta celebra la audiencia en persona, la administradora de la Junta proporcionará acceso por teleconferencia o virtual a quienes deseen participar sin tener que acudir a la audiencia en persona. Todas las personas interesadas en asistir deben comunicarse con la administradora de la Junta o visitar el calendario de NMED en www.env.nm.gov/events-calendar/. Vaya a la fecha de inicio de la audiencia y haga clic en la entrada sobre esta audiencia para obtener instrucciones sobre cómo participar. El propósito de la audiencia es considerar la petición de apelación ("Petición") presentada por Earth Care New Mexico, por Miguel Acosta Muñoz y Linda Marianiello, como individuos, (colectivamente "Peticionarios"), a través de un abogado, el Centro de Derecho Ambiental de Nuevo México, en el EIB 21-48.

En la EIB 21-48, los peticionarios impugnan la aprobación del Permiso de Calidad del Aire Núm. 8585, expedido por el Departamento de Medio Ambiente de Nuevo México ("Departamento") a Associated Asphalt and Materials, LLC ("AAM" por sus siglas en inglés) para la instalación en Santa Fe ubicada en 86 Paseo de River, Santa Fe, NM 87505 en el condado de Santa Fe, Nuevo México. Los Peticionarios sostienen que la decisión del Departamento aprueba una definición de aire ambiental que es contraria a la ley. Los Peticionarios sostienen además que el modelo de dispersión del aire es deficiente y viola las Pautas de Modelo de Dispersión del Aire de la Oficina, la Guía de la Agencia de Protección Ambiental de los Estados Unidos (EPA, por sus siglas en inglés) y la ley aplicable. Los Peticionarios alegan que el proceso de audiencia del Departamento violó el Título VI de la Ley de Derechos Civiles de 1964 y la propia política del Departamento al violar el derecho de los miembros de la comunidad con conocimientos limitados de inglés (LEP, por sus siglas en inglés) a participar significativamente en la audiencia.

La Petición y documentos relacionados pueden verse en el sitio web de *docketed matters* del Departamento, en el menú desplegable de la Junta de Mejora Ambiental, en la sección de Petición de Apelación EIB 21-48 – Permiso núm. 8585 Associated Asphalt and Materials, LLC. El sitio web de *docketed matters* del Departamento se encuentra en <https://www.env.nm.gov/opf/docketed-matters/>.

La audiencia se llevará a cabo de acuerdo con los Procedimientos Adjudicativos de la Junta (20.1.2 NMAC); la Ley de Control de la Calidad del Aire de Nuevo México, NMSA 1978, Secciones 74-2-1 a -22; la Ley de Normas del Estado, NMSA 1978, Sección 14-4-5.3; y otros procedimientos aplicables.

Todas las personas interesadas tendrán una oportunidad razonable en la audiencia para presentar pruebas, datos, puntos de vista y argumentos pertinentes, oralmente y por escrito; presentar pruebas instrumentales y para interrogar a los testigos. Toda persona que desee presentar una declaración no técnica por escrito para que conste en acta en lugar de un testimonio oral deberá presentar dicha declaración antes del cierre de la audiencia.

TESTIMONIO TÉCNICO

Toda persona que desee presentar pruebas técnicas en la audiencia deberá presentar una declaración de intención a más tardar hasta el 8 de febrero de 2022. La declaración de intención de presentar pruebas técnicas deberá incluir: (i) el nombre de la persona que presenta la declaración; (ii) una indicación de si la persona que presenta la declaración apoya o se opone a la petición en cuestión; (iii) el nombre de cada testigo; (iv) una estimación de la duración del testimonio directo de cada testigo; (v) una lista de las pruebas instrumentales, si las hay, que se ofrecerán como evidencia en la audiencia; y (vi) un resumen o esquema del testimonio directo previsto de cada testigo.

REGISTRO DE COMPARCENCIA

Toda persona que desee ser tratada como participante interesado/a y desee interrogar a los testigos en la audiencia deberá presentar y entregar a todas las partes un registro de comparecencia a más tardar hasta el 8 de febrero de 2022. Una declaración de intención presentada a tiempo se considerará un registro de comparecencia. El registro de comparecencia debe identificar a la persona que desea ser tratada como participante interesado/a y a cualquier individuo que pueda comparecer en nombre de esa persona.

Las personas que deseen presentar un testimonio no técnico antes de la audiencia pueden enviar las pruebas, datos, puntos de vista y argumentos pertinentes a:

Administradora de la Junta de Mejora Ambiental
Departamento de Medio Ambiente de Nuevo México
Edificio Harold Runnels
P.O. Box 5469
Santa Fe, NM 87502

Aquellos que presenten comentarios públicos no técnicos en la audiencia o una declaración no técnica por escrito en lugar de un testimonio oral durante la audiencia o antes de ella, deben hacer referencia al número de expediente EIB 21-48. Los comentarios del público y los testimonios no técnicos también pueden enviarse a la administradora de la Junta en public.facilitation@state.nm.us.

Si alguna persona requiere asistencia, un intérprete o un dispositivo auxiliar para participar en este proceso, comuníquese con la administradora de la Junta a más tardar el miércoles, 9 de febrero de 2022, en 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502, teléfono (505) 660-4305, o correo electrónico public.facilitation@state.nm.us (los usuarios de TDD o TTY pueden acceder a través de la Red de Retransmisión de Nuevo México, 1-800-659-1779 (voz); usuarios de TTY: 1-800-659-8331).

Aviso de no discriminación

El NMED no discrimina por motivos de raza, color, nacionalidad, discapacidad, edad o sexo en la administración de sus programas o actividades, como lo exigen las leyes y reglamentos aplicables. El NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de las consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluyendo el Título VI de la Ley de Derechos Civiles de 1964, con sus enmiendas; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972, y la Sección 13 de las Enmiendas de la Ley Federal de Control de Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o cualquiera de los programas, políticas o procedimientos de no discriminación del NMED, o si cree que ha sido discriminado con respecto a un programa o actividad del NMED, puede ponerse en contacto con: Kathryn Becker, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. También puede visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para saber cómo y dónde presentar una queja por discriminación.